UNITED NATIONS

E/NL.1988/10-12
7 November 1989
ENGLISH ONLY

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

BAHAMAS

Communicated by the Government of the Bahamas

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

INDEX

		Page
E/NL.1988/10	Chapter 213. Dangerous Drugs. An Act to Regulate the Importation, Exportation, Manufacture, Sale and Use of Opium and Other Dangerous Drugs, as amended (27 February 1939)	2
E/NL.1988/11*	An Act to make provision for the Tracing of the Proceeds of Drug Trafficking, the Confiscation of those proceeds and ancillary amendments to The Dangerous Drugs Act. (6 January 1987)	17
E/NL.1988/12*	An Act to amend The Dangerous Drugs Act. (25 March 1988)	48

* Note by the Secretariat: The present document is a direct reproduction of the texts communicated to the Secretariat.

V.89 60933 6534e

best copy available

CHAPTER 213

DANGEROUS DRUGS

An Act to Regulate the Importation, Exportation, Manufacture, Sale and Use of Opium and Other Dangerous Drugs, as amended (27 February 1939)

ARRANGEMENT OF SECTIONS

Part I

PRELIMINARY

SECTION

1. Short title.
2. Interpretation.

Part II

RAW OPIUM, COCA LEAVES, INDIAN HEMP

3. Restriction on cultivation, etc., of drugs to which Part II applies.
4. Restriction on exportation of drugs to which Part II applies.
5. Provisions relating to transist, etc., apply.
6. Drugs to which Part II applies.

Part III

PREPARED OPIUM

7. Prohibition of exportation or importation of prepared opium.
8. Penalty for manufacturing, selling, using, etc., prepared opium.

Part IV

COCAINE, MORPHINE, ETC.

9. Restriction on import and export of cocaine, etc.
10. Control of manufacture and sale of cocaine, etc.
11. Drugs to which Part IV applies.
12. Prohibition of trade, etc., in new drugs and power to apply Part IV of this Act with or without modifications to certain drugs.

Part V

IMPORT AND EXPORT

13. Definitions.
14. The export of dangerous drugs.
15. The import of dangerous drugs.
16. Dangerous drugs in transist.
17. Removal licences.
18. Drugs not to be tampered with.
19. The diversion of dangerous drugs.
20. Application of Tariff Act.
21. Smuggling.

Part VI

SUPPLY OF DANGEROUS DRUGS

22. Restriction on possession of dangerous drugs for the purpose of supplying the same.
23. Supply of dangerous drugs.
24. Qualified person authorized to be in possession and to supply dangerous drugs.

Part VII

GENERAL

25. Power of inspection and search.
26. Licenses.
27. Permission to import drugs to be obtained.
28. Offences.
29. Conspiracy to commit offence.
30. Power of arrest.
31. Forfeiture of dangerous drugs.
32. Forfeiture of articles, etc., used in connection with offence.
33. Power of Minister to make rules generally.

SCHEDULE

Forms

CHAPTER 213

DANGEROUS DRUGS

An Act to Regulate the Importation, Exportation, Manufacture, Sale and Use of Opium and Other Dangerous Drugs, as amended
(27 February 1939)

12 of 1939.
55 of 1959.
26 of 1962.
G.N. 7(II) of 1964.
25 of 1971.
E.L.A.O. 1974.
1 of 1980.
3 of 1985.
5 of 1987.

PART I

PRELIMINARY

1. This Act may be cited as the Dangerous Drugs Act. Short title.

2. (1) In this Act, unless the context otherwise requires: Interpretation.

"Approved port" means the Port of Nassau;

"Coca leaves" means the leaves of any plant of the genus of the erythroxylaecae from which cocaine can be extracted either directly or by chemical transformation;

"Conveyance" includes ship, motor vehicle, aircraft, train and any other means of transport by which goods may be brought into or taken from the Bahamas;

"Corresponding law" means any law stated in a certificate purporting to be issued by or on behalf of the government of any country outside the Bahamas to be a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of drugs in accordance with the provisions of the Hague Convention or of the Geneva Conventions, and any statement in any such certificate as to the effect of the law mentioned in the certificate or any statement in any such certificate that any facts constitute an offence against that law, shall be conclusive;

"Drugs" includes substance and product;

"Export" means to take or cause to be taken out of the Bahamas or any other country, as the case may be, by land, air or water;

"The Geneva Convention (No. 1)" means the Convention signed on behalf of His Majesty on the nineteenth February, nineteen twenty-five, at a conference held at Geneva for the purpose of completing and strengthening the provisions of the Hague Convention;

READEX FICHE

"The Geneva Convention (No. 2)" means the Convention signed on behalf of His Majesty on the thirteenth July, nineteen thirty-one, for the purposes of limiting the manufacture and regulating the distribution of narcotic drugs;

"The Hague Convention" means the International Opium Convention signed at The Hague on the twenty-third January, nineteen twelve;

"Import" means to bring or cause to be brought into the Bahamas or any other country, as the case may be, by land, air or water;

"Indian hemp" includes all parts of any plant of the genus cannabis whether growing or not from which the resin has not been extracted; the resin extracted from any part of such plant; and every compound, manufacture, salt derivative, mixture or preparation of such plant or resin;

"Medicinal opium" means raw opium which has undergone the process necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

"Minister" means the Minister responsible for Dangerous Drugs and Poisons;

"Prepared opium" means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked;

"Qualified person" means a registered medical practitioner or a registered dentist or a licensed veterinary surgeon or a licensed pharmacist or the public analyst or any person to whom special permission is granted by the Minister by Order to import or export any drug to which this Act applies and which may be imported or exported thereunder;

"Raw opium" means the spontaneously coagulated juice obtained from the capsules of the papaver somniferum, which has only been submitted to the necessary manipulations for packing and transport, whatever its content of morphine;

"Rules" means rules made under this Act by the Minister;

"Supplying" includes distributing;

"In transit" means imported into the Bahamas for the sole purpose of being exported from the Bahamas to another country.

(2) Any reference in this Act to a drug to which this Act or a Part thereof applies is a reference to a drug in respect of which this Act or, as the case may be, that Part respectively makes provision, and a drug of either such kind shall for the purposes of this Act be deemed to be a dangerous drug.

PART II

RAW OPIUM, COCA LEAVES, INDIAN HEMP, ETC.

Restriction on cultivation, importation, etc., of drugs to which Part II applies.

3. It shall not be lawful for any person to cultivate, trade in, import or bring into the Bahamas any of the drugs to which this Part of this Act applies except a qualified person with special authority of the Minister for medical or scientific purposes and if any person acts in contravention of this section he shall be guilty of an offence against this Act.

Provided that nothing in this Part of this Act shall prevent the bringing of Indian hemp, coca leaves, crude cocaine and raw opium to the Bahamas in transit in accordance with the provisions of this Act.

Restriction on exportation of drugs to which Part II applies.

4. (1) It shall not be lawful for any person to export from the Bahamas any of the drugs to which this part of this Act applies except under licence and from the approved port and if any person in contravention of this section he shall be guilty of an offence against this Act.

(2) If at any time the importation of any of the drugs to which this Part of this Act applies, into a foreign country is prohibited or restricted by the laws of that country, there shall, while that prohibition or restriction is in force, be attached to every licence which is issued by the Minister under this Act authorizing the export of any of the drugs to which this Part of this Act applies from the Bahamas, such conditions as appear to him necessary for preventing or restricting, as the case may be, the exportation of any of the drugs to which this Part of this Act applies from the Bahamas to that country during such time as the importation of such drugs into that country is so prohibited or restricted and any such licence issued before the prohibition or restriction came into force, shall, if the Minister so directs, be deemed to be subject to the like conditions.

Provisions relating to transit, etc., apply.

5. The provisions of sections 16, 17, 18 and 19 of Part V of this Act (which relates to drugs in transit, removal licences, the tampering with drugs in transit, and the diversion of drugs) shall apply to all drugs to which this Part of this Act applies.

Drugs to which Part II applies.

6. The drugs to which this Part of this Act applies are raw opium, coca leaves, Indian hemp and resins obtained from Indian hemp and all preparations of which such resins form a base, meperidine (also known as pethidine and demerol) and any other drugs to which the Minister may by Order declare that this Part of this Act shall apply.

PART III

PREPARED OPIUM

Prohibition of exportation or importation of prepared opium.

7. It shall not be lawful for any person to import or bring into, or export from, the Bahamas any prepared opium.

Penalty for manufacturing, selling, using, etc., prepared opium.

8. If any person:

(a) Manufactures, sells or otherwise deals in prepared opium;

(b) Has in his possession any prepared opium;

(c) Being the owner or the occupier of any premises knowingly permits or suffers such premises to be used, whether on one occasion or more than one occasion, for the purpose of the preparation of opium for smoking or the sale or smoking of prepared opium;

(d) Being concerned in the management of any premises knowingly permits or suffers those premises to be used, whether on one occasion or more than one occasion, for any such purposes aforesaid;

(e) Has in his possession any pipes or other utensils for use in connection with the smoking of opium or any utensils in connection with the preparation of opium for smoking;

(f) Smokes or otherwise uses prepared opium, or frequents any place used for the purpose of opium smoking,

he shall be guilty of an offence against this Act.

PART IV

COCAINE, MORPHINE, ETC.

Restriction on import and export of cocaine, etc.

9. It shall not be lawful for any person to import or bring into, or to export from, the Bahamas any drug to which this Part of this Act applies, except a qualified person and unless such importation or exportation conforms to the procedure set out in Part V of this Act, and if any person acts in contravention of this section he shall be guilty of an offence against this Act.

Control of manufacture and sale of cocaine, etc.

10. (1) For the purpose of preventing the improper use of the drugs to which this Part of this Act applies, provisions may be made by rules for controlling the manufacture, sale, possession and supply of those drugs, and in particular, but without prejudice to the generality of the foregoing powers, for:

(a) Prohibiting the manufacture of any drug to which this Part of this Act applies except on premises licensed for the purpose and subject to any condition specified in the licence;

(b) Prohibiting the manufacture, sale or supply of any such drug except by persons licensed or otherwise authorized under the rules and subject to any conditions specified in the licence or authority;

(c) Regulating the issue by a registered medical practitioner, a registered dentist or a licensed veterinary surgeon of prescriptions containing any such drug and the dispensing of any such prescriptions;

(d) Requiring persons engaged in the manufacture, sale or supply of any such drug to keep such books and furnish such information either in writing or otherwise as may be prescribed; and

(e) Generally for carrying out the objects of this Part of this Act.

(2) The rules under this section shall provide for authorizing any person who lawfully keeps open shop for the retailing of poisons in accordance with the provisions of the Pharmacy Act:

(a) To manufacture at the shop in the ordinary course of his retail business any preparation, admixture or extract of any drug to which this Part of this Act applies;

(b) To carry on at the shop the business of retailing, dispensing or compounding any such drug,

subject to the power of the Minister to withdraw the authorization in the case of a person who has been convicted of an offence against this Act, and who cannot, in the opinion of the Minister, properly be allowed to carry on the business of manufacturing or selling or supplying, as the case may be, any such drug.

(3) Nothing in any rules made under this section shall be taken to authorize the sale, or the keeping of an open shop for retailing, dispensing or compounding of, poisons by any person who is not qualified in that behalf under, or otherwise than in accordance with, the provisions of any Act prohibiting, restricting or regulating the sale of poisons.

Drugs to which Part IV applies.

11. (1) The drugs to which this Part of this Act applies are:

(a) Medicinal opium;

(b) Any extract or tincture of Indian hemp;

(c) Morphine and its salts and diacetyl-morphine (commonly known as diamorphine or heroin) and the other esters of morphine and their respective salts;

(d) Cocaine (including synthetic cocaine) and ecgonine and their respective salts, and the esters of ecgonine and their respective salts;

(e) Any solution or dilution of morphine or cocaine or their salts in an inert substance whether liquid or solid, containing any proportion of morphine or cocaine and any preparation, admixture, extract or other substance (not being such a solution or dilution as aforesaid) containing not less than one-fifth per cent of morphine or one-fifth per cent of cocaine or of ecgonine;

(f) Any preparation, admixture, extract or other substance containing any proportion of diacetyl-morphine;

(g) Dihydrohydroxycodeinone, dihydrocodeinone, dihydromorphinone, acetyldihydrocodeinone (commonly known as ascedicone), dihydromorphine, their esters and the salts of any of these substances and of their esters, morphine-N-oxide (commonly known as genomorphine), the morphine-N-oxide derivatives, and any other pentavalent nitrogen morphine derivatives;

(h) Thebaine and its salts, and (with the exception of methylmorphine, commonly known as codeine, and ethylmorphine, commonly known as dionin, and their respective salts) benzylmorphine and the other esters of morphine and their respective salts;

(i) Any preparation, admixture, extract or other substance containing any proportion of any of the substances mentioned in paragraph (g) or in paragraph (h) of this subsection;

(j) Amphetamines (beta-aminopropylbenzene and beta-aminoisopropyl-benzene);

(k) Pholcodine and diethylthiambutene ("themalon");

(l) Normethadone;

(m) Lysergic acid diethylamide and any compound declared by the Minister by Order to be a compound related to lysergic acid diethylamide.

For the purpose of the foregoing provisions:

(i) The percentage in the case of liquid preparations shall, unless other provision in that behalf is made by regulations, be calculated on the basis that a preparation containing one per cent of any substance means a preparation in which one gram of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less percentage;

(ii) The expression "ecgonine" means laevoecgonine and includes any derivatives of ecgonine from which it may be recovered industrially;

(iii) The percentage in the case of morphine shall be calculated as in respect of anhydrous morphine.

(2) If it appears to the Minister that any new derivative of morphine or cocaine or any salts of morphine or cocaine or any other alkaloid of opium or any other drug of whatever kind is, or is likely to be productive, if improperly used, or is capable of being converted into a substance which is, or is likely to be productive, if improperly used, of ill effect substantially of the same character or nature as or analogous to those produced by morphine or cocaine the Minister may by Order declare that this Part of this Act shall apply to the new derivative or alkaloid or other drug in the same manner as it applies to the drugs mentioned in subsection (1) of this section, and make any verbal alterations in the list of drugs mentioned in subsection (1) of this section incidental to the declaration contained in such Order.

(3) If the Minister thinks fit to declare that a finding with respect to any preparation containing any of the drugs to which this Part of this Act applies has, in pursuance of Article 8 of the Geneva Convention (No. 1) been communicated by the Council of the League of Nations* to the parties to the said Convention, the provisions of this Part of this Act as from such date as may be specified in the declaration cease to apply to the preparation specified therein.

Prohibition of trade, etc., in new drugs and power to apply Part IV of this Act with or without modifications to certain drugs.

12. (1) It shall not be lawful for any persons in the Bahamas to trade in or manufacture for the purpose of trade any product obtained from any of the penanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf, not being a product which was on the thirteenth day of July nineteen hundred and thirty-one being used for medical or scientific purposes:

Provided that if the Minister is at any time satisfied as respects any such product that it is of medical or scientific value, he may by Order direct that this subsection shall cease to apply to that product.

(2) If any person acts in contravention of subsection (1) of this section he shall be guilty of an offence.

(3) If it appears to the Minister that a decision with respect to any such product as is mentioned in subsection (1) of this section has in pursuance of Article 11 of the Geneva Convention (No. 2) been communicated by the Secretary-General of the League of Nations* to the parties to the said Convention, the Minister by Order, may, as the case requires, either declare that the provisions of this Part shall apply to that product in the same manner as they apply to the drugs mentioned in subsection (1) of section 11 of this Act, or apply this Part to that product with such modifications as may be specified in the Order.

(4) The Minister may by Order apply this Part of this Act, with such modifications as may be specified in the Order, to any of the following drugs, that is to say, methylmorphine (commonly known as codeine) ethylmorphine (commonly known as dionin) and their respective salts.

PART V

IMPORT AND EXPORT

Definitions.

13. In this Part of this Act:

"Import authorization" means a licence, issued by a competent authority, authorizing the importation of a specified quantity of a dangerous drug and containing full particulars of the drug, together with the name and address of the person from whom the drug is to be obtained, and specifying the period within which the importation must be effected.

Schedule.

"Import certificate" means a certificate substantially in the form A set out in the Schedule hereto, issued by a competent authority in a country into which it is intended to import dangerous drugs;

"Export authorization" means an authorization issued by a competent authority in a country from which a dangerous drug is exported, containing full particulars of such drug, and the quantity authorized to be exported, together with the names and addresses of the exporter and the person to whom it is to be sent, and stating the country to which, and the period within which, it is to be exported.

"Diversion certificate" means a certificate issued by the competent authority of a country through which a dangerous drug passes in transit, authorizing the diversion of such drug to a country other than that specified as the country of ultimate destination in the

---

* A function now performed by the Secretary-General of the United Nations Organization.

export authorization, and containing all the particulars required to be included in an export authorization, together with the name of the country from which the consignment was originally exported.

The export of dangerous drugs.

14. (1) Upon the production of an import certificate duly issued by the competent authority in any country, it shall be lawful for the Minister to issue an export authorization in the form B set out in the Schedule hereto in respect of any drug referred to in the import certificate to any person who is named as the exporter in such certificate, and is, under the provisions of this Act, otherwise lawfully entitled to export such drug from the Bahamas. The export authorization shall be prepared in triplicate and two copies shall be issued to the exporter, who shall send one copy with the drug to which it refers when such drug is exported. The Minister shall send the third copy direct to the appropriate authority of the country of ultimate destination. Where the intended exportation is to a country which is not a party to the Convention, it shall not be necessary to produce an import certificate as aforesaid. In all cases it shall be in the absolute discretion of the Minister to issue or refuse an export authorization, as he may see fit.

(2) No dangerous drug shall be exported from the Bahamas unless the consignor is in possession of a valid and subsisting export authorization relating to such drug granted under this Act.

(3) At the time of exportation of any dangerous drug the exporter shall produce to the Comptroller of Customs the dangerous drug, the export authorization relating thereto, and such other evidence as the Comptroller of Customs may require to satisfy him that the drug is being lawfully exported to the place and person named in the authorization which refers to it.

(4) No person shall export, cause to be exported, or take any steps preparatory to exporting any dangerous drug from the Bahamas except in pursuance of and in accordance with the provisions of this Act.

The import of dangerous drugs.

15. (1) An import authorization in the form C set out in the Schedule hereto permitting the importation into the Bahamas of any dangerous drug specified therein may be granted by the Minister subject to such conditions as he shall deem fit to any person who may lawfully import such drug.

(2) Where an import authorization is issued in pursuance of subsection (1) of this section, the Minister shall also issue, in relation to the dangerous drug intended to be imported, an import certificate (form A) which shall be forwarded by the intending importer to the person from whom the drug is to be obtained. When the importer to whom an import authorization is issued under this section intends to import the drug or drugs to which such authorization relates in more than one consignment, a separate import certificate shall be issued to him in respect of each such consignment.

(3) No dangerous drug shall be imported into the Bahamas unless the person to whom the drug is consigned is in possession of a valid and subsisting import authorization granted in pursuance of this section.

(4) Every dangerous drug imported into the Bahamas from a country which is a party to the Convention shall be accompanied by a valid and subsisting export authorization or diversion certificate.

(5) No person shall import, cause to be imported or take any steps preparatory to importing, any dangerous drug into the Bahamas except in pursuance of and in accordance with the provisions of this Act.

Dangerous drugs in transit.

16. (1) If a dangerous drug which is in transit:

(a) Is not in course of transit from a country from which it may lawfully be exported to another country into which it may lawfully be imported; or

(b) Was exported from a country which is a party to the Convention and was not accompanied by a valid and subsisting export authorization or diversion certificate, as the case may be, the person to whom the dangerous drug was imported shall be guilty of an offence.

(2) Where any dangerous drug in transit is accompanied by an export authorization or diversion certificate and the Comptroller of Customs has reasonable grounds for believing that such authorization or certificate is false, or that it has been obtained by fraud or wilful misrepresentation of a material particular, it shall be lawful for the Comptroller of Customs to seize and detain the drug to which such authorization or certificate relates. Upon being satisfied that such authorization or certificate is valid or has not been obtained by fraud or misrepresentation as aforesaid the Comptroller of Customs shall release the drug.

(3) Where the dangerous drug in transit is not accompanied by an export authorization or diversion certificate by reason of the fact that the drug comes from a country not a Party to the Convention and the Comptroller of Customs has reasonable grounds for believing that such drug is being conveyed in an unlawful manner or for an unlawful purpose or is in course of transit for the purpose of being imported into another country in contravention of the laws of that country it shall be lawful for the Comptroller of Customs to seize the drug and the drug shall with effect from the seizure thereof be forfeited to the Crown.

(4) Where a dangerous drug brought into the Bahamas in transit is landed, or trans-shipped in the Bahamas it shall remain under the control of the Comptroller of Customs and shall be moved only under and in accordance with a removal licence granted in pursuance of section 17 of this Act.

(5) Nothing in this section contained shall be deemed to apply to any dangerous drug in transit by post or in transit by air if the aircraft passes over the Bahamas without landing, or to such quantities of dangerous drugs as may, bona fide, reasonable from part of the medical stores of any ship or aircraft.

Removal licences.

17. (1) No person shall:

(a) Remove any dangerous drug from the conveyance by which it is brought into the Bahamas in transit; or

(b) In any way move any such drug in the Bahamas at any time after removal from such conveyance except under and in accordance with a licence (in the form D set out in the Schedule hereto and in this Act referred to as a "removal licence") issued by the Minister. In all cases it shall be in the absolute discretion of the Minister to issue or refuse a removal licence as he shall deem fit.

(2) No removal licence for the transfer of any such drug to any conveyance for removal out of the Bahamas shall be issued unless and until a valid and subsisting export authorization or diversion certificate relating to it is produced to the Minister save that where the drug has come from a country not a Party to the Convention his subsection shall not apply.

(3) The provisions of this section shall not apply to dangerous drugs in transit by post.

Drugs in transit not to be tampered with.

18. It shall be unlawful for any person to cause any dangerous drug in transit to be subject to any process which would alter its nature, or wilfully to open or break any package containing a dangerous drug in transit except upon the instructions of the Comptroller of Customs and in such manner as he may direct.

The diversion of dangerous drugs.

Schedule.

19. (1) No person shall, except under the authority of a diversion certificate in the form E set out in the Schedule hereto, cause or procure any dangerous drug brought into the Bahamas in transit to be diverted to any destination other than that to which it was originally

consigned. In the case of any drug in transit accompanied by an export authorization or a diversion certificate issued by a competent authority of some other country, the country to which the drug was originally consigned shall be deemed to be the country stated in such export authorization or diversion certificate to be the country of destination.

(2) The Minister may in his absolute discretion issue a diversion certificate in respect of any dangerous drug in transit upon production to him of a valid and subsisting import certificate issued by a competent authority in the country to which it is proposed to divert the drug, or if that country is not a Party to the Convention upon such evidence as may satisfy him that the drug is to be sent in a lawful manner and for a proper purpose.

(3) A diversion certificate shall be issued in duplicate; one copy thereof shall accompany the drug when it is exported from the Bahamas. Another copy shall be despatched by the Minister direct to the proper authority in the country to which the consignment has been diverted.

(4) Upon the issue of a diversion certificate the export authorization or diversion certificate (if any) accompanying the drug on its arrival in the Bahamas shall be detained by the Minister and returned to the authority issuing such authorization or diversion certificate together with a notification of the name of the country to which the drug has been diverted.

Application of Tariff Act.

20. (1) Articles prohibited to be imported by virtue of this Act shall be deemed to be included among the goods enumerated and described in the schedules of prohibitions and restrictions contained in the Tariff Act for the time being in force and the provisions of this Act relating to the prohibition of the export of articles shall have effect as though such articles were articles the import of which was prohibited by the Tariff Act for the time being in force and the provisions of that Act or of any Act relating to tariff shall apply in either case.

(2) If any goods prohibited to be exported by virtue of this Act are exported from the Bahamas in contravention thereof, or brought to a quay or other place to be shipped for the purpose of being so exported or of being waterborne to be so exported, the exporter or his agent shall be liable for each such offence to forfeit either treble the value of the goods, including the duty payable thereon on import, or five thousand dollars at the election of the Comptrolier; and the offender may either be detained or proceeded against by summons.

Smuggling.

21. The regulations for the prevention of smuggling, together with the provisions relating to procedure incident to such regulation, contained in the Customs Management Act shall have effect as though they were included in this Act in relation to all the drugs to which this Act applies, and the provisions of the Customs Management Act or of any Act amending or extending that Act or in substitution therefor shall apply accordingly.

PART VI

SUPPLY OF DANGEROUS DRUGS

Restriction on possession of dangerous drugs for the purpose of supplying the same.

22. (1) It is an offence for a person to have a dangerus drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of the provisions of this Act.

(2) Subject to subsections (4) and (5), any person convicted of an offence under subsection (1) shall be liable:

(a) On conviction on information, in the case of a first conviction for such offence to a fine not exceeding two hundred thousand dollars and shall be sentenced to imprisonment for a term not less than two years but not exceeding ten years and in the case of a second or subsequent conviction for such offence to a fine not exceeding five hundred thousand dollars and shall be sentenced to imprisonment for a term not less than five years but not exceeding twelve years;

(b) On summary conviction, in the case of a first conviction for such offence to a fine not exceeding one hundred thousand dollars and shall be sentenced to imprisonment for a term not less than one year but not exceeding five years and in the case of a second or subsequent conviction for such offence to a fine not exceeding two hundred thousand dollars and shall be sentenced to imprisonment for a term not less than three years but not exceeding seven years.

(3) For the purposes of subsection (1) of this section where a person is found in possession of two or more packets containing dangerous drugs, or a quantity of dangerous drugs in excess of such quantity as may be prescribed in regard to that drug, it shall be presumed, until the contrary is proved, that he was in possession of that drug with intent to supply it to another or others.

(4) Where a person other than a child or young person is convicted of having committed an offence under subsection (1) with intent to supply a dangerous drug to a child or young person, the person so convicted shall be liable:

(a) On conviction on information to a fine not exceeding two hundred thousand dollars and shall be sentenced to imprisonment for a term not less than five years but not exceeding twenty years;

(b) On summary conviction, to a fine not exceeding one hundred thousand dollars and shall be sentenced to imprisonment for a term not less than three years but not exceeding ten years.

(5) Notwithstanding the jurisdiction to hear a charge against a child or young person conferred upon a juvenile court under section 7 of the Children and Young Persons (Administration of Justice) Act, where a child or young person is charged under subsection (1) with committing an offence with intent to supply a dangerous drug to another child or young person, the charge shall be heard by a magistrate who shall, if satisfied of the guilt of the child or young person so charged, order him to be committed to an industrial school or place of detention for a period of not less than one year but not exceeding five years.

(6) Save as provided in subsection (5), the provisions of this section do not in any way derogate from or limit the provisions of the Children and Young Persons (Administration of Justice) Act.

(7) In this section "child", "industrial school", "place of detention" and "young person", respectively, have the same meaning as in the Children and Young Persons (Administration of Justice) Act.

Supply of dangerous drugs.

23. (1) Subject to any rules made under section 10 of this Act for the time being in force, it shall not be lawful for any person to supply or offer to supply a dangerous drug to another.

(2) Subject to the provisions of this Act, it is an offence for a person:

(a) To supply or offer to supply a dangerous drug to another in contravention of subsection (1) of this section;

(b) To be concerned in the supplying of a dangerous drug in contravention of subsection (1) of this section; or

(c) To be concerned in making in contravention of subsection (1) of this section an offer to supply a dangerous drug.

Qualified person authorized to be in possession and to supply dangerous drugs.

24. (1) Subject to the provisions of this Act a qualified person is authorized, so far as may be necessary for the practise or exercise of his profession, function or employment and in his capacity as such, to be in possession of and to supply a dangerous drug.

(2) Every dangerous drug in the actual custody of a qualified person authorized by subsection (1) of this section shall, except when the necessities of the practice or exercise of his profession, function or

employment by virtue of which that person is so authorized otherwise require, be kept in a locked receptacle which can be opened only by him or by some other person authorized by this Act to be in possession of the dangerous drug.

PART VII

GENERAL

Power of inspection and search.

25. (1) Any peace officer or other person authorized in that behalf by any general or special order of the Minister shall, for the purposes of the execution of this Act, have power to enter the premises of any person carrying on the business of a producer, manufacturer, seller, or supplier of any drug to which this Act applies, and to demand the production of and to inspect any books or documents relating to dealings in any such drug and to inspect any stocks of any such drugs.

(2) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that any drugs to which this Act applies are in contravention of the provisions of this Act or any rules made thereunder, in the possession or under the control of any person in any premises or place, or that any document directly or indirectly relating to or connected with any transaction or dealing which was, or any intended transaction or dealing which would if carried out, be an offence against this Act, or in the case of a transaction or dealing carried out or intended to be carried out in any place outside the Bahamas, an offence against the provision of any corresponding law in force in that place, is in the possession or under the control of any person in any premises or place, he may grant a search warrant authorizing any peace officer named in the warrant, at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises or place named in the warrant, and to search the premises or place and any person found therein, and if there is reasonable ground for suspecting that an offence against this Act has been committed in relation to any such drugs which may be found in the premises or place or in the possession of any such persons, or that any document which may be so found is such a document as aforesaid, to seize and detain those drugs or that document as the case may be.

(3) If any person wilfully delays or obstructs any person in the exercise of his power under this section or fails to produce or attempts to conceal any such books, stocks, drugs or documents as aforesaid, he shall be guilty of an offence against this Act.

(4) Any person acting under the aforementioned warrant shall not be liable to any suit for seizing or detaining such books, stocks, drugs or documents.

Licences.

26. Licences or authorities for the purposes of this Act may be issued or granted by the Minister and may be issued or granted on such terms and subject to such conditions (including in the case of a licence the payment of a fee) as the Minister thinks proper.

Permission to import drugs to be obtained.

27. (1) Any person who desires to import any drug to which Part II of this Act applies and which may be imported under the provisions of this Act shall in the first instance apply to the Minister for permission to import such drug and shall state the purpose for which it is required; and every requisition for the export to the importer of any such drugs shall be accompanied by a certificate from the Minister stating that the import of the consignment in question is approved of by the Minister and is required for legitimate purposes. In the case of all drugs to which Part IV of this Act for the time being applies the certificate shall state specifically that they are required solely for medicinal or scientific purposes.

(2) The Minister may by Order required all drugs to which this Act applied imported or otherwise brought into the Bahamas to be deposited at the dispensary of the Princess Margaret Hospital at the risk of the importer, thence to be withdrawn on the certificate of the Minister at

the request in writing of a qualfied person who shall state the purpose for which such drug is required;

Offences.

28. (1) Any person:

(a) Who acts in contravention of, or fails to comply with the provisions of sections 14, 15, 16, 17, 18 and 19 or any rule made under this Act;

(b) Who acts in contravention of, or fails to comply with, the conditions of any licence issued or authority granted under or in pursuance of this Act;

(c) Who for the purpose of obtaining, whether for himself or for any other person, the issue, grant or renewal of any such licence or authority as aforesaid, makes any declaration or statement which is false in any material particular, or knowingly utters, produces or makes use of any such declaration or statement or any document containing the same;

(d) Who in the Bahamas aids, abets, counsels or procures the commission in any place outside the Bahamas of any offence punishable under the provisions of any corresponding law in force in that place or does any act preparatory to, or in furtherance of, any act which, if committed in the Bahamas, would constitute an offence against this Act;

(e) Who grows or cultivates in any part of the Bahamas the opium poppy (Papaver somniferum), Indian hemp (any plant of the genus cannabis) or coca leaves;

(f) Who in any place, solicits any person for the purpose of selling to that person, any dangerous drug;

(g) Who in any place, solicits any person for the purpose of obtaining from that person any money or valuable thing by misrepresentation,

shall be guilty of an offence.

(2) Every person guilty of an offence against this Act for which no other penalty is provided shall in respect of each offence, be liable:

(a) On conviction on information, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding ten years, or to both such find and imprisonment;

(b) On summary conviction, to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding five years, or to both such find and imprisonment,

and shall, in every case on conviction for the offence, forfeit to the Crown all articles in respect of which the offence was committed.

(3) Subject as hereinafter provided, no person shall in the Bahamas be proceeded against by information for an offence under this Act unless the proceedings are instituted by, or with the consent of the Attorney-General, and no person shall, on conviction for any offence of contravening or failing to comply with any rule under this Act relating to the keeping of books or the issuing or dispensing of prescriptions containing drugs to which this Act applies be sentenced to imprisonment without the option of fine or to pay a fine exceeding two hundred and fifty dollars if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to, or committed in the course of, or in connection with, the commission or intended commission of any offence against this Act.

(4) If any person attempts to commit an offence against this Act, or solicits or incites another person to commit such an offence, he shall without prejudice to any other liability, be liable on summary conviction to the same punishment and forfeiture as if he had committed an offence under this Act.

(5) Where any drug to which this Act applies is, without the proper authority, found in the possession of any person or store or kept in a place other than a place prescribed for the storage or keeping of such drug, such person or the occupier or owner of such place, unless he can prove the same was deposited there without his knowledge or consent, and also the owner of, or other person responsible for the keeping of such drug, shall be guilty of an offence against this Act.

(6) Where a person convicted of an offence under this Act is a company the chairman and every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) Any proceedings for an offence against this Act or proceedings for attempting or soliciting or inciting another person to commit such an offence before a court of summary jurisdiction may, notwithstanding any provisions prescribing the time within which such proceedings may be brought, may be brought either within the time so prescribed or within three months from the date on which evidence sufficient in the opinion of the Attorney-General to justify the prosecution for the offence comes to his knowledge, whichever is the longer, and, for the purpose of this subsection, a certificate purporting to be signed by the Attorney-General as to the date on which such evidence as aforesaid comes to his knowledge shall be conclusive evidence thereof.

(8) For the purpose of removing doubts, it is hereby declared:

(a) That in any proceedings against any person for an offence against this Act it is not necessary to negative by evidence any licence, authority or other matter of exception or defence, and that the burden of proving any such matter lies on the person seeking to avail himself thereof;

(b) That, notwithstanding anything in any other Act to the contrary, any term of imprisonment imposed under this section on any person by a court of summary jurisdiction in respect of the non-payment of a fine for an offence against this Act may be ordered to commence at the expiration of any term of imprisonment imposed on that person for the same offence in addition to the fine;

(c) That any article shall be deemed to be imported under the provisions of this Act or exported under licence if the importer complies with the requirements of this Act and the rules made thereunder and the holder of a licence authorizing the exportation complies with the conditions, if any, of the licence, but not otherwise.

(9) For the purposes of subsection (1):

(a) A misrepresentation is a representation made by a person that a substance is a dangerous drug, with knowledge that such representation is false or without the belief that it is true and made with the purpose to defraud;

(b) A misrepresentation may be made either by written or spoken words or by any other conduct, sign or means of whatsoever kind;

(c) Where a person is found in any place in possession of dangerous drugs or any substance which having regard to its appearance, quality or texture is capable of being misrepresented as a dangerous drug, it shall be presumed, unless the contrary is shown, that that person was in possession for the purpose of committing an offence under paragraph (f) or of making a misrepresentation.

29. (1) If two or more persons agree or act together with a common purpose in committing or abetting an offence against this Act whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that offence as the case may be, and shall be liable on conviction to the same punishment and forfeiture as if he had committed an offence under this Act.

Conspiracy to commit offence.

(2) A person within the jurisdiction of the courts can be guilty of conspiracy by agreeing with another person who is beyond the jurisdiction for the commission or abetment of any offence under this Act to be committed by them or either of them, or by any other person, either within or beyond the jurisdiction; and for the purposes of this subsection as to an offence to be committed beyond the jurisdiction, "offence" means any act which, if done within the jurisdiction, would be an offence under this Act.

Power of arrest.

30. Any peace officer may arrest without warrant any person who has committed, or attempted to commit, or is reasonably suspected by the peace officer of having committed or attempted to commit an offence against this Act, if he has reasonable ground for believing that that person will abscond unless arrested, of if the name and address are unknown to and cannot be ascertained by him.

Forfeiture of dangerous drugs.

31. A court before which any person is charged for an offence under this Act may order that any dangerous drugs to which the charge relates shall be forfeited to the Crown.

Forfeiture of articles, etc., used in connection with offence.

32. (1) A court may (whether or not any person has been convicted of such offence) order to be forfeited to the Crown:

(a) Any money, aircraft or vessel of less than 500 tons net register or other thing (other than premises) which has been used in the commission of or in connection with an offence under this Act; and

(b) Any money or other property received or possessed by any person as a result or product of an offence under this Act.

(2) An order under subsection (1) of this section for the forfeiture of an aircraft, vessel or other thing may include a term permitting a specified person or persons to redeem such aircraft, vessel or other thing on such conditions, including conditions as to the payment of the value or a proportion of the value thereof to the Crown, as the court may think fit.

(3) The court may require that notice of an application for forfeiture under subsection (1) of this section shall be given in such manner as it thinks fit.

(4) The Minister responsible for Legal Affairs may, in his absolute discretion, and after any proceedings under this Act are concluded, entertain and give effect to any moral claim to, or in respect of money, aircraft, vessel, thing or other property which has been forfeited to the Crown.

(5) In this section "aircraft" means an aircraft of which the maximum total authorized weight as defined in the Colonial Air Navigation Order, 1961, does not exceed 30,000 lbs.

Power of Minister to make rules generally.

33. In addition to the specific power in this Act provided, the Minister may make rules generally for the purpose of carrying out the objects of this Act; and also to give effect to any requirements which may from time to time become necessary for the carrying out of the provisions of any pertinent international convention relating to drugs to which the Bahamas has adhered.

E/NL.1988/11

An Act to make provision for the Tracing of The Proceeds of Drug Trafficking, The Confiscation of those proceeds and ancillary amendments to The Dangerous Drugs Act.

Date of Assent: 31st December, 1986
Commencement: 6th January, 1987

Enacted by the Parliament of The Bahamas.

Preliminary

Short title and commencement

1. This Act may be cited as the Tracing and Forfeiture of Proceeds of Drug Trafficking Act, 1986 and shall come into operation on such date as the Minister responsible for Legal Matters may appoint by notice published in the Gazette.

Interpretation

2.—(1) In this Act —

"corresponding law" has the same meaning as in the Dangerous Drugs Act;

"the Court" means the Supreme Court;

"dangerous drug" has the same meaning as in the Dangerous Drugs Act;

"drug trafficking" means doing or being concerned in any of the following, whether in The Bahamas or elsewhere —

(a) cultivating, manufacturing or supplying a dangerous drug where the cultivation, manufacture or supply contravenes or constitutes an offence under section 3, 8 (a) or 21B(1) of the Dangerous Drugs Act, or any rule made under section 10 of that Act, or a corresponding law;

(b) transporting or storing a dangerous drug where possession of the drug constitutes an offence under section 25(5) of that Act or a corresponding law;

(c) importing or exporting a dangerous drug where the importation or exportation contravenes section 14(4) or 15(5) of that Act or a corresponding law;

and includes a person doing the following, whether in The Bahamas or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby —

(i) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated, or

(ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment;

"drug trafficking offence" means any of the following —

(a) an offence of cultivating under section 3 of the Dangerous Drugs Act;

(b) an offence of manufacturing under section 8(a) of that Act or in contravention of any rule made under section 10 of the Act;

(c) an offence under section 21A(1) or 21B(2) of that Act;

(d) an offence relating to dangerous drugs under section 115 or 116(e) of the Customs Management Act;

(e) an offence under section 20;

(f) aiding, abetting, counselling or procuring the commission of any of the offences in paragraphs (a) to (e);

(g) an offence under section 25(4) or 26 of the Dangerous Drugs Act of attempting, soliciting, inciting or conspiring, to commit any of the offences in paragraphs (a) to (e);

"interest", in relation to property, includes right;

"magistrate" has the same meaning as in the Magistrates Act;

"premises" includes any place and, in particular, includes —

(a) any vehicle, vessel or aircraft; and

(b) any tent or moveable structure;

"property" includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

(2) The expressions listed in the first column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the second column in relation to those expressions.

Expression	*Relevant Provision*
Benefited from drug trafficking	4(4)
Charging order	11(2)
Confiscation order	4(8)(a)
Dealing with property	10(7)
Defendant	4(8)(b)
Gift caught by this Act	3(9)
Making a gift	3(10)
Proceeds of drug trafficking	5(1)(a)
Realisable property	3(1)
Restraint order	10(1)
Value of gift, payment or reward	3
Value of proceeds of drug trafficking	5(1)(b)
Value of property	3(4)

(3) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

(4) The following provisions of this section shall have effect for the interpretation of this Act.

(5) Property is held by any person if he holds any interest in it.

(6) References to property held by a person include a reference to property vested in his trustee or receiver within the meaning of the Bankruptcy Act.

(7) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(8) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(9) Proceedings in The Bahamas for an offence are concluded on the occurrence of one of the following events —

(a) the discontinuance of the proceedings;

(b) the acquittal of the defendant;

(c) the quashing of the defendant's conviction for the offence;

(d) the grant by the Governor-General, in Her Majesty's name and on Her Majesty's behalf, of a pardon in respect of the defendant's conviction for the offence;

(e) the court sentencing or otherwise dealing with the defendant in respect of his conviction for the offence without having made a confiscation order; and

(f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(10) An order is subject to appeal so long as an appeal or further appeal is pending against the order or (if it was made on a conviction) against the conviction; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

Definition of various terms used.

3.—(1) In this Act "realisable property" means, subject to subsection (2) —

(a) any property held by the defendant; and

(b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.

(2) Property is not realisable property if —

(a) an order under section 261 of the Criminal Procedure Code Act; or

(b) an order under section 27B of the Dangerous Drugs Act,

is in force in respect of the property.

(3) For the purposes of sections 6 and 7, the amount that might be realised at the time a confiscation order is made against the defendant is —

(a) the total of the values at that time of all the realisable property held by the defendant; less

(b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Act.

(4) Subject to the following provisions of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property —

(a) where any other person holds an interest in the property, is —

(i) the market value of the first mentioned person's beneficial interest in the property, less

(ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

(b) in any other case, is its market value.

(5) Subject to subsection (10), references in this Act to the value at any time ("the material time") of a gift caught by this Act or of any payment or reward are references to —

(a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (6) applies, the value there mentioned,

whichever is the greater.

(6) Subject to subsection (10), if at the material time the recipient holds —

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to —

(a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or

(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.

(8) In subsection (7)(b), "preferential debts" —

(a) in relation to bankruptcy means the debts to be paid in priority under section 30 of the Bankruptcy Act, assuming the date the confiscation order is made to be the date of the order of adjudication for the purposes of section 30; and

(b) in relation to winding up means the debts to be paid in priority under section 159 of the Companies Act, assuming the date the confiscation order is made to be the relevant date for the purposes of section 159.

(9) A gift (including a gift made before the commencement of this Act) is caught by this Act if —

(a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or

(b) it was made by the defendant at any time and was a gift of property —

(i) received by the defendant in connection with drug trafficking carried on by him or another, or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(10) For the purposes of this Act —

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

(b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

(11) Subject to subsection (12), in sections 22 and 23 "items subject to legal privilege" means —

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an advisor or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made —

(i) in connection with the giving of legal advice, or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(12) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

(13) Subject to subsection (14), in sections 22 and 23 "excluded material" means —

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence; and

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence.

(14) For the purposes of subsection (13), a person holds material in confidence if he holds it subject —

(a) to an express or implied undertaking to hold it in confidence; or

(b) to a restriction on disclosure or an obligation of secrecy contained in any written law, including a written law passed after this Act.

(15) In subsection (13)(a), "personal records" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating —

(a) to his physical or mental health;

(b) to spiritual counselling or assistance given or to be given to him; or

(c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who —

(i) by reason of his office or occupation has responsibilities for his personal welfare, or

(ii) by reason of an order of a court has responsibilities for his supervision.

Confiscation of Proceeds of Drug Trafficking

Confiscation orders.

4.—(1) Upon conviction for one or more drug trafficking offences committed after the coming into operation of this Act a person shall in addition to any other penalty prescribed by any law for that offence be liable at the time of sentencing in respect of that conviction or at any time thereafter to have a confiscation order made against him in accordance with the provisions of this Act.

(2) For the purpose of determining whether a confiscation order shall be made a court shall if —

(a) it is a court of summary jurisdiction refer the defendant to the Supreme Court to be dealt with in accordance with the following provisions of this section; or

(b) it is the Supreme Court proceed to act in accordance with the following provisions of this section.

(3) The Court shall first determine whether he has benefited from drug trafficking.

(4) For the purposes of this Act, a person who has at any time (whether before or after the commencement of this Act) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(5) If the Court determines that he has so benefited, the Court shall determine in accordance with section 7 the amount to be recovered in his case by virtue of this section.

(6) The Court shall then, in respect of the conviction or convictions concerned order him to pay that amount, but no such order shall be made where the conviction is subject to appeal.

(7) No written law restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the likelihood of or the making of an order under this section restrict a court from dealing with an offender in any way the court considers appropriate in respect of a drug trafficking offence.

(8) In this Act —

(a) an order under this section is referred to as a "confiscation order"; and

(b) a person against whom proceedings have been instituted for a drug trafficking offence is referred to (whether or not he has been convicted) as "the defendant".

Assessing the proceeds of drug trafficking

5.—(1) For the purposes of this Act —

(a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; and

(b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the assumptions set out in subsection (3).

(3) The assumptions referred to in subsection (2) are —

(a) that any property appearing to the Court —

(i) to have been held by him at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by him;

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the Court to be sentenced is an offence under section 20(1).

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the Court shall leave out of account any of his proceeds of drug trafficking that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

Statements relating to drug trafficking

6.—(1) Where —

(a) there is tendered to the Court by the Attorney-General a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and

(b) the defendant accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where —

(a) a statement is tendered under subsection (1); and

(b) the Court is satisfied that a copy of that statement has been served on the defendant,

the Court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2) he may be treated for the purposes of this section as accepting every allegation in the statement apart from —

(a) any allegation in respect of which he has complied with the requirement; and

(b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.

(4) Where —

(a) there is tendered to the Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and

(b) the Attorney-General accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance by the Attorney-General as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either —

(a) orally before the Court; or

(b) in writing in accordance with rules of court.

(6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

Amount to be recovered under confiscation order.

7.—(1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking.

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 6 or otherwise), the Court may issue a certificate giving the Court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

(3) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the Court to be the amount that might be so realised.

Enforcement of Confiscation Orders

Application of procedure for enforcing fines.
No. 38 of 1968.
Ch. 48.

8.—(1) Where the Court orders the defendant to pay any amount under section 4, section 218 of the Criminal Procedure Code Act, and section 119(5) of the Penal Code Act shall have effect as if —

(a) that amount were a fine imposed on him in respect of a conviction for a summary offence; and

(b) in the scale set out in paragraph (b) of the proviso to section 119(5) of the Penal Code Act, for the entry relating to an amount exceeding fifty-five dollars there were substituted —

"one thousand dollars	six months
ten thousand dollars	eight months
twenty thousand dollars	twelve months
fifty thousand dollars	eighteen months
one hundred thousand dollars	two years
two hundred and fifty thousand dollars	three years
one million dollars	four years
If the amount exceeds —	
one million dollars	five years".

(2) Where —

(a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 4 in respect of an offence or offences; and

(b) at the time the warrant is issued, the defendant is liable to serve or is undergoing a term of custody in respect of the offence or offences,

the term of imprisonment or of detention under section 42 of the Children and Young Persons (Administration of Justice) Act to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b).

Ch. 56.

(3) The reference in subsection (2) to the term of custody which the defendant is liable to serve or is undergoing in respect of the offence or offences is a reference to the term of imprisonment or of detention under section 42 of the Children and Young Persons (Administration of Justice) Act which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection —

(a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and

(b) there shall be disregarded —

(i) any term of imprisonment fixed under section 119(5) of the Penal Code Act, and

(ii) any term of detention fixed under section 42 of the Children and Young Persons (Administration of Justice) Act,

for which a warrant of commitment has not been issued at the time the warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 4.

(4) An amount payable under a confiscation order is not a fine, damages or costs for the purposes of section 38 of the Children and Young Persons (Administration of Justice) Act.

Cases in which restraint orders and charging orders may be made.

9.—(1) The powers conferred on the Court by sections 10(1) and 11(1) are exercisable where —

(a) the defendant has been convicted for a drug trafficking offence committed after the coming into operation of this Act; or

(b) proceedings instituted in The Bahamas against the defendant for a drug trafficking offence have not been concluded; and

(c) the Court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

(2) Those powers are also exercisable where the Court is satisfied —

(a) that an information is to be laid under the Criminal Procedure Code Act charging a person with having committed a drug trafficking offence; and

(b) that there is reasonable cause to believe that he has benefited from drug trafficking.

(3) For the purposes of sections 10 and 11, at any time when those powers are exercisable before proceedings have been instituted —

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2)(a); and

(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for a drug trafficking offence.

(4) Where the Court has made an order under section 10(1) or 11(1) by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable.

(5) For the purposes of sections 10 and 11, where the defendant has been convicted for a drug trafficking offence committed after the coming into operation of this Act evidence of such conviction shall be prima facie proof that the defendant has benefited from drug trafficking.

Restraint orders.

10.—(1) The Court may by order (in this Act referred to as a "restraint order") prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply —

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.

(4) A restraint order —

(a) may be made without prejudice to the other provi sions of this Act on an application by the Attorney-General;

(b) may be made on an ex parte application to a judge in chambers; and

(c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order —

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when proceedings for the offences are concluded.

(6) Where the Court has made a restraint order, the Court may at any time appoint a receiver —

(a) to take possession of any realisable property; and

(b) in accordance with the directions of the Court, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) —

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from The Bahamas.

(8) Where the Court has made a restraint order, a police officer may for the purpose of preventing any realisable property being removed from The Bahamas, seize the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the Court.

Charging orders in respect of land and securities

11.—(1) The Court may make a charging order on realisable property for securing the payment to the Crown —

(a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and

(b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown under a confiscation order.

(3) A charging order —

(a) may be made only on an application by the Attorney-General; and

(b) may be made on an ex parte application to a judge in chambers.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on —

(a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act —

(i) in any asset of a kind mentioned in subsection (5), or

(ii) under any trust; or

(b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) The assets referred to in subsection (4) are —

(a) land in The Bahamas; or

(b) shares, stock, bonds, notes (other than promissory notes), debentures, debenture stock, units under a unit trust scheme and any other securities.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b), the Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(7) The Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the amount payment of which is secured by the charge is paid into court.

Charging orders: supplementary provisions.

12.—(1) A charging order may be made either absolutely or subject to conditions as to notifying any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters.

(2) Subject to subsection (4), the Judgments Act applies in relation to charging orders as it applies in relation to judgments which have been entered up in the Supreme Court.

(3) Subject to any provision made under section 13 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge existing against the property charged.

(4) An order under section 11(7) discharging the charging order may direct that, with effect from the date of the order of discharge, the Judgments Act shall cease to apply in relation to the charging order.

Realisation of property.

13.—(1) Where —

(a) a defendant has been convicted for a drug trafficking offence and a confiscation order is made in respect of that conviction; and

(b) the order is not subject to appeal,

the Court may on an application by the Attorney-General exercise the powers conferred by subsections (2) to (6).

(2) The Court may appoint a receiver in respect of realisable property.

(3) The Court may empower a receiver appointed under subsection (2) or in pursuance of a charging order —

(a) to enforce any charge imposed under section 11 on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 11, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The Court may empower any such receiver to realise any realisable property in such manner as the Court may direct.

(6) The Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 11.

(8) The Court shall not in respect of any property exercise the powers conferred by subsections (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

Application of proceeds of realisation and other sums.

14.—(1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 10 or 13 or in pursuance of a charging order, that is —

(a) the proceeds of the enforcement of any charge imposed under section 11;

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 10 or 13; and

(c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums —

(a) among such of those who held property which has been realised under this Act; and

(b) in such proportions,

as the Court may direct after giving a reasonable opportunity for such person to make representations to the Court.

(3) The receipt of any sum by the Registrar of the Supreme Court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the sum shall be applied as follows:

(a) if paid by a receiver under subsection (1), it shall first be applied in payment of his remuneration and expenses;

(b) subject to paragraph (a), it shall be applied in reimbursement of any sums paid by the Attorney-General under section 18(2),

and the balance shall be treated as if it were a fine imposed by the Court.

Exercise of powers by the Court or receiver.

15.—(1) The following provisions of this section apply to the powers conferred on the Court by sections 10 to 14 or on a receiver appointed under section 10 or 13 or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available, for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Crown.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Variation of confiscation orders.

16.—(1) If, on an application by the defendant in respect of a confiscation order, the Court of Appeal is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court of Appeal shall issue a certificate to that effect, giving the court's reasons.

(2) For the purposes of subsection (1), in the case of realisable property held by a person who has been adjudged bankrupt the Court of Appeal shall take into account the extent to which any property held by him may be distributed among creditors.

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the Court of Appeal for the amount to be recovered under the confiscation order to be reduced.

(4) The Court of Appeal shall, on an application under subsection (3) —

(a) substitute for the amount to be recovered under the confiscation order such lesser amount as the Court of Appeal thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment fixed under section 119(5) of the Penal Code Act in respect of the amount to be recovered under the confiscation order a shorter term determined in accordance with that subsection (as it has effect by virtue of section 8) in respect of the lesser amount.

Bankruptcy of defendant

17.—(1) Where a person who holds realisable property is adjudged bankrupt —

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and

(b) any proceeds of property realised by virtue of section 10(6) or 13(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 13,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act.

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court by sections 10 to 14 or on a receiver shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of that Act.

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) does not affect the enforcement of a charging order —

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, a receiver stands appointed under section 11 of the Bankruptcy Act and any property of the debtor is subject to a restraint order, any such property in the hands of the receiver shall be dealt with in such manner as the Court may direct.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act —

(a) no order shall be made under section 71 of the Bankruptcy Act in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and

(b) any order made under the said section 71 after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

Receivers: supplementary provisions.

18.—(1) Where a receiver appointed under section 10 or 13 or in pursuance of a charging order takes any action —

(a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;

(b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 14(3)(a), be paid by the Attorney-General or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

Compensation.

19.—(1) If proceedings are instituted against a person for a drug trafficking offence or offences and either —

(a) the proceedings do not result in his conviction for any drug trafficking offence; or

(b) where he is convicted of one or more drug trafficking offences —

(i) the conviction or convictions concerned are quashed (and no conviction for any drug trafficking offence is substituted), or

(ii) he is pardoned by the Governor-General in Her Majesty's name and on Her Majesty's behalf, in respect of the conviction or convictions concerned,

the Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant.

(2) The Court shall not order compensation to be paid in any case unless the Court is satisfied —

(a) that there has been some serious default in the investigation or prosecution of the offence or offences concerned and that, but for that default, the proceedings would not have been instituted or continued; and

(b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court under sections 10 to 13.

(3) The amount of compensation to be paid under this section shall be such as the Court thinks just in all the circumstances of the case.

(4) Compensation payable under this section shall be paid out of the Consolidated Fund.

Ancillary Offences Relating to Drug Trafficking

Assisting another to retain or living off of the benefits of drug trafficking

20.—(1) Subject to subsection (4), if a person enters into or is otherwise concerned in an arrangement whereby —

(a) the retention or control by or on behalf of another (in this section referred to as "A") of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) A's proceeds of drug trafficking —

(i) are used to secure that funds are placed at A's disposal, or

(ii) are used for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.

(2) It shall be an offence for a person to

(a) be in possession of property; or

(b) be living off of proceeds,

derived from his participation in drug trafficking.

(3) In this section, references to any person's proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking.

(4) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based —

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or any law; and

(b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is —

(i) it is done before he does the act concerned, being an act done with the consent of the police officer, or

(ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(5) In proceedings against a person for an offence under subsection (1), it is a defence to prove —

(a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking;

(b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or

(c) that —

(i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (4) in relation to the arrangement, but

(ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (4)(b).

(6) In proceedings against a person for an offence under subsection (2), evidence establishing —

(a) that a person had acquired substantial amounts of money, land, property, shares, stock, bonds, notes, debentures, debenture stock, units under a unit trust scheme or any other securities; and

(b) that in relation to the value of the money, land, property or any security as is mentioned in paragraph (a), the person had no apparent legitimate source of income to account for the acquisition of his wealth, as the case may be,

is, in the absence of evidence to the contrary prima facie proof that the money, property, security as is mentioned in paragraph (a) or wealth was knowingly derived from that person's participation in drug trafficking.

(7) In proceedings against a person for an offence under subsection (2), that person shall not be excused from answering any question or producing any document or thing by reason that the answer thereto or the production thereof, as the case may be, would tend to be self-incriminating but, notwithstanding any other law to the contrary, no answer given or the fact of such production shall be used or be admissible as evidence against that person in any criminal proceedings except —

(a) those in which the answer was given or the document or thing was produced;

(b) in any subsequent proceedings instituted in The Bahamas against that person for a drug trafficking offence; or

(c) in proceedings in which that person may be charged with perjury or conspiring with or procuring others to commit perjury.

(8) A person guilty of an offence under this section shall be liable —

(a) on conviction on information, to imprisonment for a term of fourteen years or to a fine of twenty-five thousand dollars or to both; and

(b) on summary conviction, to imprisonment for a term of five years or to a fine of ten thousand dollars or to both.

Enforcement of external orders

21.—(1) The Attorney-General may by Order apply this section to any order made after the Order comes into force by a court of a country or territory outside The Bahamas, being an order —

(a) of a description specified in the Order; and

(b) made for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value.

(2) An order to which this section applies is referred to below in this section as an "external confiscation order"; and in this section "designated country" means a country or territory outside The Bahamas designated by an Order under this section.

(3) Subject to subsection (4), the Court may, on an application by or on behalf of the government of a designated country, register an external confiscation order made there, in like manner as if it were a judgment awarded by the Court in its civil jurisdiction.

(4) The Court shall not register an external confiscation order unless —

(a) the Court is satisfied that at the time of registration the order is in force in the designated country and is not subject to appeal in the designated country;

(b) the Court is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(c) the Court is of opinion that enforcing the order in The Bahamas would not be contrary to the interests of justice.

(5) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied (whether by payment of the amount due under the order, by the person against whom the order is made serving imprisonment in default or otherwise).

(6) In relation to an external confiscation order registered under this section, sections 10 to 16 shall have effect subject to such modifications as may be specified in an Order under this section as they have effect in relation to a confiscation order.

(7) In subsection (4), "appeal" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution.

(8) In any case where the Court is satisfied, on an application by or on behalf of the government of a designated country, that proceedings which might result in an external confiscation order being made against a person have been instituted in the designated country and have not been concluded, sections 10 to 12 shall have effect in relation to those proceedings —

(a) as they would have effect in relation to proceedings instituted in The Bahamas against that person for a drug trafficking offence which have not been concluded;

(b) as if references to a confiscation order were references to an external confiscation order and references to an application by the Attorney-General were references to an application by or on behalf of that government; and

(c) subject to such other modifications as may be specified in an Order under this section.

(9) An Order under this section may include such provision —

(a) as to evidence or proof of any matter for the purposes of this section; and

(b) as to the circumstances in which proceedings are to be treated for those purposes as instituted or concluded in any designated country,

as the Attorney-General considers expedient.

(10) An Order varying or revoking a previous Order under this section may contain such incidental, consequential and transitional provisions as the Attorney-General considers expedient.

Investigations into Drug Trafficking

Order to make material available

22.—(1) Without prejudice to any other procedure provided by any other law, a police officer may, for the purpose of an investigation into drug trafficking, apply to a magistrate for an order under subsection (2) in relation to particular material or material of a particular description.

(2) Subject to section 25(11), if on such an application the magistrate is satisfied that the conditions in subsection (4) are fulfilled, the magistrate may make an order that the person who appears to him to be in possession of the material to which the application relates shall —

(a) produce it to a police officer for him to take away; or

(b) give a police officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be seven days unless it appears to the magistrate that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that there are reasonable grounds for suspecting that the material to which the application relates —

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

(ii) does not consist of or include items subject to legal privilege or excluded material; and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard —

(i) to the benefit likely to accrue to the investigation if the material is obtained, and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where the magistrate makes an order under subsection (2)(b) in relation to material on any premises the magistrate may, on the application of a police officer, order any person who appears to the magistrate to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) Provision may be made by rules of court as to —

(a) the discharge and variation of orders under this section; and

(b) proceedings relating to such orders.

(7) Where the material to which an application under this section relates consists of information contained in a computer —

(a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) An order under subsection (2) —

(a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and

(c) may be made in relation to material in the possession of a Government department.

Authority for search.

23.—(1) A police officer may, for the purpose of an investigation into drug trafficking, apply to a magistrate for a warrant under this section in relation to specified premises.

(2) On such application, the magistrate may issue a warrant authorising a police officer to enter and search the premises if he is satisfied —

(a) that an order made under section 22 in relation to material on the premises has not been complied with; or

(b) that the conditions in subsection (3) are fulfilled; or

(c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(b) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that the conditions in section 22(4)(b) and (c) are fulfilled in relation to any material on the premises; and

(c) that it would not be appropriate to make an order under that section in relation to the material because —

(i) it is not practicable to communicate with any person entitled to produce the material,

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions referred to in subsection (2)(c) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and

(c) that —

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) entry to the premises will not be granted unless a warrant is produced, or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

Retention of seized material. No. 38 of 1968.

24. For the purposes of section 68 of the Criminal Procedure Code Act —

(a) an investigation into drug trafficking shall be treated as if it were an investigation in respect of which the seizure of anything is authorised; and

(b) material produced in pursuance of an order under section 22(2)(a) shall be treated as if it were material seized and brought before a court in pursuance of a power conferred by a search warrant.

Disclosure of information held by Government departments.

25.—(1) Notwithstanding any provision in any other law but subject to subsection (4), the Court may on an application by the Attorney-General order any material mentioned in subsection (3) which is in the possession of a Government department to be produced to the Court within such period as the Court may specify.

(2) The power to make an order under subsection (1) is exercisable if —

(a) the powers conferred on the Court by sections 10(1) and 11(1) are exercisable by virtue of section 9(1); or

(b) those powers are exercisable by virtue of section 9(2) and the Court has made a restraint or charging order which has not been discharged;

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 9(3) shall apply for the purposes of this section as it applies for the purposes of sections 10 and 11.

(3) The material referred to in subsection (1) is any material which —

(a) has been submitted to an officer of a Government department by the defendant or by a person who has at any time held property which was property available in respect of the defendant;

(b) has been made by an officer of a Government department in relation to the defendant or such a person; or

(c) is correspondance which passed between an officer of a Government department and the defendant or such a person,

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by sections 10 to 13 or on a receiver appointed under section 10 or 13 or in pursuance of a charging order.

(5) The Court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or a court presided over by a magistrate.

(7) The Court may by order authorise the disclosure to a person mentioned in subsection (8) of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless —

(a) a reasonable opportunity has been given for an officer of the department to make representations to the Court; and

(b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.

(8) The persons referred to in subsection (7) are a police officer or the Attorney-General.

(9) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of any investigation or proceedings relating to drug trafficking.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under subsection (1) and, in the case of material in the possession of a Government department, an order under section 22(2) may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(12) The person on whom such an order is served —

(a) shall take all reasonable steps to bring it to the attention of the officer concerned; and

(b) if the order is not brought to that officer's attention within the period referred to in subsection (1) shall report the reasons for the failure to the Court;

and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a).

Offence of prejudicing investigation.

26.—(1) Where, in relation to an investigation into drug trafficking, an order under section 22 has been made or has been applied for and has not been refused or a warrant under section 23 has been issued, a person who, knowing or suspecting or having reasonable grounds to suspect that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

(2) In proceedings against a person for an offence under this section, it is a defence to prove —

(a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or

(b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) A person guilty of an offence under this section shall be liable —

(a) on conviction on information, to imprisonment for five years or to a fine of ten thousand dollars or to both; and

(b) on summary conviction, to imprisonment for two years or to a fine of five thousand dollars or to both.

Power to inspect records of Registrar General's Department.

27.—(1) The Registrar General shall, on an application under subsection (2) or (3) made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the Registrar General under the Registration of Records Act which relates to the person or property so specified.

Ch. 193.

(2) An application may be made by any police officer not below the rank of superintendent or the Attorney-General and on an application under this subsection an appropriate certificate shall be given to the Registrar General.

(3) An application may be made by a receiver appointed under section 10 or 13 and on an application under this subsection there shall be given to the Registrar General —

(a) a document certified by the Registrar of the Supreme Court to be a true copy of the order appointing the receiver; and

(b) a certificate that there are reasonable grounds for suspecting that there is information kept by the Registrar General which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.

(4) The reference in subsection (1) to the provision of information is a reference to its provision in documentary form.

(5) In subsection (2), "appropriate certificate" means a certificate —

(a) that there are reasonable grounds for suspecting that there is information kept by the Registrar General which is likely to be of substantial value (whether by itself or together with other information) to an investigation into drug trafficking; or

(b) that —

(i) a person specified in the certificate has committed or there are reasonable grounds for suspecting that a person so specified has committed a drug trafficking offence, and

(ii) there are reasonable grounds for suspecting that there is information kept by the Registrar General which is likely to be of substantial value (whether by itself or together with other information) to an investigation into whether the person so specified has benefited from drug trafficking or in facilitating the recovery of the value of his proceeds of drug trafficking.

Special powers of investigation.

28.—(1) Where the Attorney-General is satisfied that there are reasonable grounds for suspecting that a drug trafficking offence has been committed by a person the Attorney-General may for the purpose of an investigation into such an offence exercise in respect of that person whether a public officer or not the powers conferred upon him by the provisions of Part III of the Prevention of Bribery Act 1976 and in that respect those provisions and any other section of that Act ancillary to those provisions shall mutatis mutandis apply.

No. 9 of 1976.

(2) The provisions of subsection (1) shall not be in derogation of, but shall be in addition to, the powers conferred under the Prevention of Bribery Act 1976 and the other sections of this Act.

Supplemental

Winding up of company holding realisable property.

29.—(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator shall not be exercisable in relation to —

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 10(6) or 13(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 13;

but there shall be payable out of such property any expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 10 to 14 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —

(a) so as to prohibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred by sections 10 to 14. Cx. 184

(4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section —

"company" means any company which may be wound up under the Companies Act;

"liquidator" includes any person appointed to the office of official liquidator (whether provisionally or otherwise) under section 92 of the Companies Act; and

"the relevant time" means —

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) where such an order has been made, and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and

(c) in any other case where such an order has been made, the time of the making of the order.

Application of Act.

30.—(1) This Act applies to property whether it is situated in The Bahamas or elsewhere.

(2) Notwithstanding anything to the contrary in any other law no investigation or proceedings in respect of an offence under this Act shall be subject to any limitation of time prescribed by any law for the commencement of such investigation or proceedings.

The Crown.

31. This Act binds the Crown.

Amendment of section 47 of Ch. 61.

32. Section 47 of the Bankruptcy Act shall have effect as if amounts payable under confiscation orders were debts excepted under paragraph (2) of that section.

Ancillary amendments to Ch. 223.

33.—(1) Section 21A of the Dangerous Drugs Act (hereinafter in this section referred to as the principal Act) is hereby amended —

(a) by the repeal and replacement of subsection (2) as follows —

"(2) Subject to subsections (4) and (5), any person convicted of an offence under subsection (1) shall be liable —

(a) on conviction on information, in the case of a first conviction for such offence to a fine not exceeding two hundred thousand dollars and shall be sentenced to imprisonment for a term not less than two years but not exceeding ten years and in the case of a second or subsequent conviction for such offence to a fine not exceeding five hundred thousand dollars and shall be sentenced to imprisonment for a term not less than five years but not exceeding twelve years;

(b) on summary conviction, in the case of a first conviction for such offence to a fine not exceeding one hundred thousand dollars and shall be sentenced to imprisonment for a term not less than one year but not exceeding five years and in the case of a second or subsequent conviction for such offence to a fine not exceeding two hundred thousand dollars and shall be sentenced to imprisonment for a term not less than three years but not exceeding seven years."; and

(b) by the addition thereto of the following subsections —

"(4) Where a person other than a child or young person is convicted of having committed an offence under subsection (1) with intent to supply a dangerous drug to a child or young person, the person so convicted shall be liable —

(a) on conviction on information to a fine not exceeding two hundred thousand dollars and shall be sentenced to imprisonment for a term not less than five years but not exceeding twenty years;

(b) on summary conviction, to a fine not exceeding one hundred thousand dollars and shall be sentenced to imprisonment for a term not less than three years but not exceeding ten years.

(5) Notwithstanding the jurisdiction to hear a charge against a child or young person conferred upon a juvenile court under section 7 of the Children and Young Persons (Administration of Justice) Act, where a child or young person is charged under subsection (1) with committing an offence with intent to supply a dangerous drug to another child or young person, the charge shall be heard by a magistrate who shall, if satisfied of the guilt of the child or young person so charged, order him to be committed to an industrial school or place of detention for a period of not less than one year but not exceeding five years.

(6) Save as provided in subsection (5), the provisions of this section do not in any way derogate from or limit the provisions of the Children and Young Persons (Administration of Justice) Act.

(7) In this section "child", "industrial school", "place of detention" and "young person", respectively, have the same meanings as in the Children and Young Persons (Administration of Justice) Act.".

(2) Subsection (4) of section 27B of the principal Act is hereby amended by the deletion of the expression "Minister" and by the substitution therefor of the words "Minister responsible for Legal Affairs"."

An Act to amend The Dangerous Drugs Act.

[Date of Assent: 23rd March, 1988]
[Date of Commencement: 25th March, 1988]

Enacted by the Parliament of The Bahamas.

1. This Act, which amends the Dangerous Drugs Act, may be cited as the Dangerous Drugs (Amendment) Act, 1988. Short title Ch. 223

2. Section 21A of the principal Act is amended by the addition thereto of the following subsections — Amends section 21A of principal Act

"(8) Notwithstanding anything to the contrary in the foregoing provisions of this section, in any case in which a person is convicted of having committed an offence under subsection (1) and the quantity of dangerous drugs to which the charge relates is —

(a) in the case of Indian hemp, in excess of ten pounds;

(b) in the case of cocaine, in excess of two pounds; or

(c) in the case of opium morphine and its salts including diacetylmorphine (commonly known as heroin), in excess of twenty grams,

the provisions of subsections (2) and (4) shall have effect as if for the respective maximum terms of imprisonment liable to be imposed thereunder there were substituted a term of life imprisonment.

(9) In any case in which a Magistrate has convicted a person of having committed an offence under subsection (1) or (4) and the person so convicted is liable to imprisonment for life by virtue of subsection (8), the Magistrate shall commit the convicted person in custody for sentence to the Supreme Court either at any sessions then in progress or at the next convenient sessions.

(10) In any such case as is referred to in subsection (9), the Supreme Court may proceed to sentence the convicted person as if the person so committed had pleaded guilty before the Supreme Court to that offence or had been found guilty by verdict of a jury:

Provided that the Supreme Court shall not sentence any person in any case until the time limited by section 230 of the Criminal Procedure Code Act, 1968 for an appeal against conviction has expired or, in the event of a notice of appeal being served within that time, until that appeal has been finally determined.

(11) In a case referred to in subsection (9) or (10), it shall not be necessary for any information to be filed against the person so committed for sentence and the convicted person shall be sentenced for the offence in respect of which he has been convicted as aforesaid".